

1 LYNNE C. HERMLE (STATE BAR NO. 99779)
lchermle@orrick.com
2 MICHAEL A. APARICIO (STATE BAR NO. 206300)
maparicio@orrick.com
3 JESSICA R. PERRY (STATE BAR NO. 209321)
jperry@orrick.com
4 AMIRA B. DAY (STATE BAR NO. 239045)
aday@orrick.com
5 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
6 Menlo Park, CA 94025
Telephone: 650-614-7400
7 Facsimile: 650-614-7401

8 Attorneys for Defendant
WAL-MART STORES, INC.

9 Arnold W. Schwartz (STATE BAR NO. 63436)
10 Marcus J. Bradley (STATE BAR NO. 174156)
E-Mail: Marcus.Bradley@SchwartzDanielsBradley.com
11 SCHWARTZ, DANIELS & BRADLEY
29229 Canwood Street, Suite 208
12 Agoura Hills, California 91301
Telephone: (310) 478-5838 or (818) 338-8900
13 Facsimile: (310) 478-1232

14 Attorneys for Plaintiffs

15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION
19

20 In Re WAL-MART STORES, INC. WAGE
AND HOUR LITIGATION

Case No. C 06-02069 SBA

**STIPULATION AND ORDER
DISMISSING THIRD CLAIM FOR
RELIEF AND STRIKING RELATED
ALLEGATIONS**

21
22 This Document Relates to:

23 Case Nos.
24 C 06-02069 SBA (Smith) and
25 C 06-05411 SBA (Ballard)
26
27
28

STIPULATION

WHEREAS, Plaintiffs' First Amended Consolidated Complaint sets forth, among other claims for relief on behalf of the putative class members, a claim for unpaid overtime in the third claim for relief.

WHEREAS on May 29, 2007, the Court issued an Order granting in part and denying in part Defendant's Motion to Dismiss and Motion to Strike the First Amended Consolidated Complaint;

WHEREAS, in opposing Defendant's Motions with respect to the third claim for relief, Plaintiffs informed the Court that another case entitled *Newland v. Wal-Mart Stores, Inc.* is pending in the California Superior Court, County of Alameda, Case No. RG05193921;

WHEREAS, Plaintiffs have determined that the claims relating to alleged unpaid overtime in this action are substantially identical to the claims for unpaid overtime in the *Newland* action;

WHEREAS the *Newland* action was commenced on January 14, 2005, over a year before the commencement of this action;

WHEREAS Plaintiffs have determined that the *Newland* matter, which previously was stayed, is now moving forward and said stay has been lifted;

WHEREAS Plaintiffs have determined that continuing to litigate the third claim for relief for overtime in this action may lead to unnecessary expense and waste of judicial resources;

WHEREAS Plaintiffs in this matter wish to dismiss the entire third claim for relief and strike all allegations that relate solely to that claim;

NOW, THEREFORE, the Parties hereby stipulate and agree and ask that the Court to approve this Stipulation as an Order of the Court:

1. Pursuant to Federal Rule of Civil Procedure 41(a), to DISMISS the third claim for relief in its entirety;

2. Pursuant to Federal Rule of Civil Procedure 12(f), to STRIKE the following language from the First Amended Consolidated Complaint, which by virtue of the

dismissal of the third claim for relief is rendered impertinent:

Paragraph	Page	Line Start	Line End	Text
¶ 1	3	15	16	"(iii) current and former employees are owed overtime wages"
¶ 3	3	23	26	ENTIRE PARAGRAPH
¶ 6	4	11	-	"receiving pay for all overtime wages owed"
¶ 7	4	19	-	"(b) failed to pay for all overtime wages earned"
¶ 20	6	21	-	"overtime"
¶ 23	7	3	6	ENTIRE PARAGRAPH
¶ 27	7	21	26	"During Plaintiff Michael Wiggins' employment with Wal-Mart, Wal-Mart failed to pay overtime. Wal-Mart would 'shave off' time from his time cards whereby Mr. Wiggins was not paid for all of the hours he worked. Also, when Mr. Wiggins worked a graveyard shift, Wal-Mart would count the hours worked before midnight as working one day, and all the hours worked after midnight as hours worked on another day, thereby denying Mr. Wiggins overtime pay"
¶ 33	9	22	26	ENTIRE "Compensation Subclass" paragraph
¶ 37.5	11	11	13	ENTIRE PARAGRAPH
¶ 46	14	4	-	"overtime"
¶ 47	14	10		"overtime pay"
¶ 47	14	11	12	"and (3) Defendant altered Class and Sub-Class members overtime pay records thereby reducing the amount of

				overtime pay due them."
¶ 59-69	16-18	-	-	ENTIRE THIRD CAUSE OF ACTION AND ALL PARAGRAPHS
¶ 73	19	3	-	"510, and 1194 et seq."
¶ 86	21	16	17	"the failure to pay all straight time and overtime compensation due to members of the proposed Class"
¶ 89	22	15	-	"STRAIGHT TIME, OVERTIME"
¶ 95	23	15	-	"overtime wages, wages for work off-the-clock, and"
Prayer ¶ 2	24	4	-	"overtime"

Dated: July 3, 2007

MARLIN & SALTZMAN
SCHWARTZ, DANIELS & BRADLEY
BAILEY PINNEY PC
LAW OFFICES OF PETER M. HART

/s/

Marcus J. Bradley
Attorneys for Plaintiffs

Dated: July 3, 2007

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/

Michael A. Aparicio
Attorneys for Defendant
WAL-MART STORES, INC.

///

///

///

///

ORDER

Pursuant to Stipulation, it is so ordered.

Dated: July 30, 2007



SAUNDRA B. ARMSTRONG
UNITED STATES DISTRICT JUDGE